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ALZA Corporation

By Henrietta Votaw
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#4/
Elections

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: PHIPPS, et al
Serial No.: 08/952,368
Filed: 17 November 1997
Title: Electrotransport Agent Delivery Method and Apparatus

Attorney Docket No. ARC2426CIP1
Group Art Unit: 3734
Examiner: SADULA, J.

RECEIVED

RESPONSE

MAY 04 1999

Group 3700

Assistant Commissioner for Patents
Washington, Dc 20231

Sir:

This communication is in response to an Office Action mailed 30 March 1999 in which the examiner has set forth a restriction under 37 CFR § 1.499, requiring the election of one of two groups of claims.

Applicants hereby elect with traverse, Group II which includes claims 14-26 drawn to a method for delivery of an agent.

Applicant asserts that the request for restriction is not proper for the following reasons.

Under Article 17(3)(a) of the Patent Cooperation Treaty, if the ISA "considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees." The EPO found that the

application complied with the unity of invention requirements as there was no invitation for additional fees from the European Patent Office which acted as the ISA for this case.

In addition, the application complies with 37 CFR § 1.475(b)(4) which discusses Unity of Invention during the national stage. Subsection (b)(4) describes a combination of inventions which is considered to have unity of invention. According to § 1.475(b)(4) an application having claims to "A process and an apparatus or means specifically designed for carrying out the said process; " shall be considered to have unity of invention.

The instant application describes in claim 14 and the related dependent claims a method or process for delivering a therapeutic agent through a body surface by means of an electrotransport device having a specially configured pulsing current. Claim 1 and its dependent claims 2-13, are drawn to a device to implement the process recited in claim 14 and its dependents. As all claims in the instant application fall within § 1.475 (b)(3), there is unity of invention.

Applicant asserts that the requirement for restriction have been traversed and its withdrawal is earnestly solicited.

Respectfully submitted,

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